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BOX 201
CHOTEAU, MT 59422

SENATE JUDICIARY

Exhibit No. 1
Date 1-25-07
Bill No. SB 238

January 23, 2007

TO WHOM IT MAY CONCERN:

I am writing in SUPPORT OF SENATE BILL 238.

The country and the state use to be a place of access and enjoyment of ownership of property. The rights were granted by federal law under R.S. 2477, Homestead Laws, Land Patents, and use. Through the years of interruption and the courts use of dictionary definitions instead of state statute, the access issue has become paramount to land use and value. In a recent decision from the Ninth Circuit Court of Appeals, "patents issued to the homesteaders contained access guarantees." Every piece of private property in existence today had to go through a patent process.

There needs to be a process by which landlocked parcels can be accessed without lengthy legal and expensive battles.

LANDOWNER ENTITLED TO PARK ACCESS

A Montana landowner completed briefing his motion for summary judgment seeking a court order that, pursuant to two acts of Congress and the common law, he is entitled to year-round access to his Glacier National Park property. The motion comes following an October 2005 ruling by the U.S. Court of Appeals for the Ninth Circuit that a Montana federal district court erred when it ruled the man's lawsuit was filed too late.



The Montana district court will hear oral arguments in November prior to ruling on Jack McFarland's claims that he owns an easement in a National Park Service (NPS) road and the NPS arbitrarily denied his request for a permit for winter access to his land. In July 2003, the district court held that a 1975 snowmobile ban and a 1976 closure of a road to the public put Mr. McFarland on notice of the NPS's adverse claim.

From 1910 until 1999, the NPS admitted that it could not deny in-holders access to their Glacier National Park prop-

erty; then, in 1999, the Clinton Administration announced that Mr. McFarland could not go to his property during the winter. Mr. McFarland's deed, the act creating Glacier National Park, and the long-standing policy of the NPS prove Mr. McFarland is entitled to year-round access to his property.

In the late 1800's, land that is now Glacier National Park in northwest Montana was settled under the Homestead Act. In 1910, Congress created Glacier National Park, but included guaranteed access rights for those with homesteads inside the new park. Patents issued to the homesteaders also contained access guarantees. In recognition of those rights, for decades, homeowners in Glacier National Park had year-round access to their land. Even after the park closed to the general public, homeowners plowed the roads that accessed their property and went to and from as they pleased.

In 1999, the NPS announced, in an e-mail to Mr. McFarland, that he would no longer be able to travel to his property after the road north of the Polebridge Ranger Station was closed to the public. In 2000, Mr. McFarland sued.

TENTH CIRCUIT IN RARE EN BANC REVIEW

The U.S. Court of Appeals for the Tenth Circuit conducted a rare rehearing by the entire Tenth Circuit (*en banc*) on whether environmental groups may intervene as parties in lawsuits filed by westerners to resolve property disputes between them and the federal government. MSLF had urged the Tenth Circuit to review a three-judge panel's ruling that such groups could become parties in a lawsuit filed by Utah's San Juan County regarding a road in the Canyonlands National Park in southeastern Utah. In August 2005, by a vote of 2-1, the panel allowed the groups to intervene even though they admit they do not claim a property interest in the road but have only an interest in how the road is managed by the National Park Service.

San Juan County had filed a Quiet Title Act lawsuit to allow a Utah federal

district court to rule whether the federal government or San Juan County owns the road. Westerners must file similar lawsuits when federal agencies deny them the right to access their property by way of federal land. By law, no one else may join such lawsuits; the disputes are between the owners. The panel's ruling would allow environmental groups to convert these lawsuits into federal land management debates.

In June 2004, San Juan County filed its lawsuit arguing that it owns an R.S. 2477 interest in Salt Creek Road; an attempt by environmental groups to intervene in the litigation was denied in October 2004 because they claimed no interest in the road.

MSLF filed a brief with the entire Tenth Circuit urging it to adopt the position of the dissenting judge.

US SUPREME COURT VOIDS WATER RULE

In a 5-4 decision, the U.S. Supreme Court sharply limited the scope of the federal government's power under the Clean Water Act to define wetlands however it desires. The ruling is consistent with the argument filed by MSLF urging that federal jurisdiction does not extend to intrastate "wetlands" isolated hydrologically from "waters of the United States." In so ruling, the Court reversed a decision by the U.S. Court of Appeals for the Sixth Circuit that a Michigan man, John A. Rapanos, his wife, and their companies violated the law when they conducted activity on lands that they own. The Sixth Circuit had rejected Mr. Rapanos's argument that his lands are miles from navigable water and may not be regulated by the Environmental Protection Agency (EPA).



Chief Justice Roberts wrote in a concurring opinion that the ruling was "another defeat for the [United States]" and "its essentially boundless view of the scope of its power."

John A. Rapanos and his wife Judith, through their wholly owned companies, own various parcels of land in Bay, Midland, and Saginaw Counties, Michigan, known as the Salzburg, Hines Road, Pine River, Freeland, Mapleton, and Jefferson Avenue sites. Over the years, Mr. Rapanos sought to develop these properties for commercial use. Although his properties lie approximately twenty miles from the nearest navigable waterway, the EPA claimed jurisdiction over his land pursuant to the Clean Water Act. Mr. Rapanos was charged with and convicted of illegally discharging fill material into protected wetlands at these sites between 1988 and 1997. The Rapanos are represented by Pacific Legal Foundation of Sacramento, California.

The Litigator

9TH Circuit Strengthens Quiet Title Act Rights

MONTANA MAN MAY SUE TO ACCESS HOME

A Montana federal district court erred when it dismissed a landowner's suit against the National Park Service (NPS) for violating two acts of Congress and the common law by denying him access to his private property in Glacier National Park, the U.S. Court of Appeals for the Ninth Circuit ruled recently. The Ninth Circuit remanded the case to the district court for a trial to allow Jack McFarland to prove that he owns an easement in NPS land that allows him to access his home on a year-round basis.

The decision, which turned on the technical issue of whether Mr. McFarland had filed his lawsuit within the federal statute of limitations, is a victory for tens of thousands of inholders—those who own land within federal enclaves—around the country. First, the decision means that, when the federal government claims it owns federal land, it has not challenged a citizen's claim, for example, to an easement in the same land. Second, the ruling sends a message to federal district courts that various appellate courts will scrutinize assertions by federal lawyers that landowners are time-barred from protecting their property rights.

In July 2003, the Montana federal district court ruled that Mr. McFarland's lawsuit, under the Quiet Title Act and

the Administrative Procedure Act, was barred by the Quiet Title Act's 12-year statute of limitations. The district court ruled that Mr. McFarland knew, in 1976, that the NPS disputed his claim of an easement in a park road and that his lawsuit should have been filed in 1988 instead of 2000. The district court concluded that a 1975 Glacier National Park snowmobile ban and a 1976 closure to the general public, but not to Mr. McFarland, of the road he used to reach his home, had placed him on notice of the NPS's adverse claim. The district court rejected Mr. McFarland's argument that he was not denied use of the road to his home until 1999 and that he had the right to chal-

lenge the NPS's 2000 denial of a special use permit to use the road.

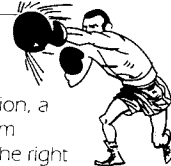
Before the Ninth Circuit, Mr. McFarland argued that, from 1910 until 1999, the NPS knew that it could not deny inholders access to their property and, in fact, ensured that they had the access that they needed to their property. Moreover, in 1985, the NPS issued a management plan in which it stated explicitly that inholders owned property within the park and could not be denied access. Finally, asserted Mr. McFarland, even after the NPS's 1975 snowmobile ban and its 1976 winter closure of the road used by Mr. McFarland, the NPS ensured that he had whatever access he needed to his home.



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In the late 1800's, what is now Glacier National Park in northwest Montana was settled under the Homestead Act. In 1910, Congress created the park, but guaranteed access rights for those with homesteads there. Plus, patents issued to the homesteaders contained access guarantees. Thus, homeowners in Glacier National Park had year-round access to their property. Even after the park closed to the general public in the winter months, homeowners plowed the roads that accessed their property and went to and from as they pleased.

One of those roads, Glacier Route 7, which was built in 1901 and runs north from West Glacier past Polebridge Ranger Station, is the route by which Mr. McFarland reaches his property. It was not until 1999 that the NPS announced, in an e-mail to Mr. McFarland, that he would no longer be able to travel to his home after the winter closure of the road north of the Polebridge Ranger Station.

Park inholders granted access to build shed

By CHRIS PETERSON

Hungry Horse News

Inholder near Lake Mc-

Donald Lodge will be able to build a shed on his property in an agreement with National Park Service last week.

The special use permit has been in the works since 2003. The final deal will allow Robert Lucke and Tom Hewlett temporary access to build a storage shed on their lot and have access to their property via a Park administrative road. The inholders have decided

access to the lot from the Going-to-the-Sun Highway, but the Park wasn't keen on allowing another road.

"This arrangement will allow the in-holders access to their property without having to build a road to the site, which is something we would not like to see," said Park Superintendent Mick Holm in a prepared release. "This solution will best protect park resources."

The landowners have agreed to haul building

materials to the property on foot and to only use a motorized vehicle — an all-terrain vehicle — when necessary or in an emergency. Alternatively, using stock is encouraged by the park, but not required since an ATV will only be used if necessary or in an emergency. Motorized and stock use will also only be permitted when the ground is dry, frozen, or snow-covered to reduce impacts to soils and vegetation. The special use permit for minimal if any use of an ATV

will terminate in one year, at which time the access path will be rehabilitated back to a footpath.

A second permit will allow the landowners to park their vehicles along a park administrative road near their property. The permit will state that the landowners will not exercise their deeded access rights to the property from the Going-to-the-Sun Road during the time the special use permit is valid. A Special Use Permit can only be issued for up to

five years at a time and will need to be reapplied for at the end of five years. However, it is the intent of the superintendent to continue to issue a special use permit for parking along the administrative road unless the landowners request a change in the terms and conditions that the park cannot agree to or requires additional environmental analysis.

The property is 1,750 square feet in size and is located on Snyder Ridge, 1/2-mile southeast of Lake McDonald

Lodge.

The path on park land approximately 75 yards long between the administrative road and the private property. The owners of the site have told the superintendent and staff that they do not intend to reside in the structure or have a water well or septic system on the property.

The owners are precluded from living in the structure without first receiving governmental approval for water septic facilities.

Judge to Park inholder: take a hike (or ski)

By CHRIS PETERSON
Hungry Horse News

A federal judge has ruled that a North Fork inholder has no easement rights to access his property by vehicle in Glacier National Park in the winter months.

In early November, U.S. Judge Donald Molloy ruled in favor of the Park Service, in short saying that John (Jack) McFarland's property rights have not been violated by a Park Service decision that requires him to ski, snowshoe or ride a horse to his land wholly inside Glacier in the winter.

McFarland has been battling Glacier National Park since 1999, claiming he has the right to access his 2.75 acre property inside Big Prairie year round by vehicle and/or snowmobile via Glacier Route 7, commonly known as the Inside North Fork Road. The Road was built in 1901 by the Butte Oil Company to access claims at Kintla Lake. Glacier became a Park in 1910.

The Park gates the road every winter once the snow gets too deep for regular vehicle travel. It does not restrict travel entirely, however. Visitors can still ski or snowshoe the road.

In December of 1999, North Fork District Ranger Scott Emmerich informed McFarland that a policy decision had been made that "no one will drive park roads once they are closed to the public."

Prior to that decision, McFarland had informed the Park he planned on living at the ranch year-round with his wife and family. As such, McFarland, at or about the same time, also asked the Park Service for a special use permit

Association, a national parks watchdog group.

Molloy ruled against McFarland on several points. For one, he said McFarland did not have an "easement by necessity" under the Homestead Act. McFarland's property was privately owned under the Homestead Act before Glacier became a Park.

He argued that as such, he was granted what amounted to unlimited access to his land. Molloy disagreed, saying that while skiing or snowshoeing to the property may be inconvenient, it defeats necessity.

The Park Service also maintained that McFarland can also access his property even faster by driving up the North Fork Road, crossing private land and then crossing the North Fork of the Flathead River by boat or simply wading.

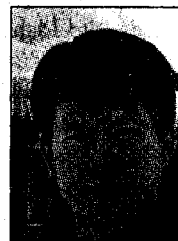
Molloy agreed with the Park Service on that count as well.

McFarland also made several other arguments in his case, claiming the Park's decision to close the road was "arbitrary and capricious," among other things.

Molloy, disagreed on that count as well.

McFarland has already appealed Molloy's decision to the Ninth Circuit Court of Appeals. The Appeals Court has heard portions of the case before. It sent the case back to Molloy last year.

In 2003 Molloy ruled that McFarland filed his suit



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Prior to that decision, McFarland had informed the Park he planned on living at the ranch year-round with his wife and family. As such, McFarland, at or about the same time, also asked the Park Service for a special use permit to use a snowmobile or vehicle, depending on road conditions, to access his property.

That permit was denied in January, 2000. The Park Service at the time noted it had closed the road to protect wildlife and other values of other visitors, who came to the area to ski or snowshoe and enjoy the peace and quiet, among other things. The Park did, however, allow McFarland to keep a snowmobile at his residence for emergencies.

McFarland, in turn, sued the Park Service, with the support of the Mountain States Legal Foundation. The Park Service in turn, was supported by the National Parks Conservation

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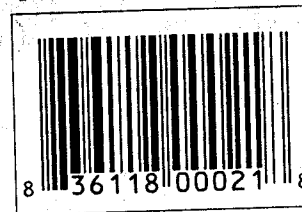
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In 2003 Molloy ruled that McFarland filed his suit beyond the 12-year statute of limitations and dismissed the suit. But the higher court disagreed.

Molloy's ruling this time fleshes out the case on a factual basis.

The McFarland suit has the potential to set precedent for other inholders in Glacier National Park. Other inholders in the park have also sought various degrees of access to their lands in the Park in past cases.



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Hungry Horse News

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12/29/06

1294-92-964
James Chaffin
5008 Orchard Ave
Missoula, MT 59803-2039



Re: Ravalli, MT Property
ID#: 1294-92-964
APN: 13-1566-10-1-01-02-0000

Dear James Chaffin,

Recently, while doing some basic research, I noticed that you own property in Ravalli County. I've learned over the years that many people don't ever really have the chance to take advantage of their land. It's either no time or no money.

In the meantime the "Property" is just a source of Cash Outflow every year ie:

- Property Taxes
- Property Owners Association Fees
- Assessments
- Possible Liability (if someone gets hurt on your land)
- ETC.

I am interested in buying your property and I think you will be pleased with my "ALL CASH" Net offer. When I say "NET*", that means I will pay for all closing costs. *What we agree on is what you will receive.* To guarantee your satisfaction I will use a "National Title Company" such as First American and Fidelity. Typically I can have all your money to you in less than 60 days.

Please call me toll free at 1-888-261-3732 or to expedite the sale you can also go to my web site at: **www.SELLYOURLOT.com**.

Sincerely,

Gary Dybdahl

P.S. Please remember that I am only looking to buy a specific number of properties in the area. So please call me at 1-888-261-3732 or go to www.SELLYOURLOT.com before I reach my quota.

*Excludes any Delinquencies

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